

United States District Court
EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ALLERGAN, INC.

v.

SANDOZ INC., ET AL.

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Cause No. 6:11-cv-441
Consolidated Case

ORDER DENYING MOTIONS FOR REDACTION

Before the Court is Defendants Lupin Limited and Lupin Pharmaceuticals, Inc.'s (collectively Lupin) Motion for Redaction of Trial Transcript (Doc. No. 281) and Defendant Hi-Tech Pharmacal, Co., Inc.'s Motion for Redaction of Trial Transcript (Doc. No. 282). Having considered the parties' arguments, the undisputed facts, and the applicable law, the Court **DENIES** the motions (Doc. Nos. 281, 282).

Lupin request redaction regarding testimony of two of its fact witnesses and Allergan's expert Dr. Robert Noecker. Lupin argues that this testimony concerns highly sensitive aspects of Lupin's ANDA filing with the FDA, including its bioequivalence waiver, portions of Lupin Limited's proposed package insert for its ANDA product, the specific ingredients and amounts thereof contained in Lupin Limited's ANDA product, and stability data for Lupin Limited's ANDA product. Lupin's motion cites to no case law in support of its request.

Hi-Tech requests redaction on identical grounds. Hi-Tech seeks redaction of testimony from its witness Dr. Kamel Egbaria and Allergan's expert Dr. Noecker. Hi-Tech contends that this testimony addresses its highly sensitive ANDA filing with the FDA, including its bioequivalence waiver, portions of Hi-Tech's proposed package insert for its ANDA product, the specific ingredients and amounts thereof contained in Hi-Tech's ANDA product, and stability

data for Hi-Tech's ANDA product. Hi-Tech's motion cites no law in support of its redaction request.

“It is clear that courts of this country recognize a general right to inspect and copy public records and documents, including judicial records and documents.” *Nixon v. Warner Commc'ns, Inc.*, 435 U.S. 589, 587 (1978). “It is uncontested, however, that the right to inspect and copy judicial records is not absolute. Every court has supervisory power over its own records and files, and access has been denied where court files might have become a vehicle for improper purposes.” *Id.* “Thus, the common law merely establishes a presumption of public access to judicial records.” *S.E.C. v. Van Waeyenberghe*, 990 F.2d 845, 848 (5th Cir. 1993). “Although the common law right of access to judicial records is not absolute, ‘the district court's discretion to seal the record of judicial proceedings is to be exercised charily.’” *Id.* (quoting *Fed. Savs. & Loan Ins. Corp. v. Blain*, 808 F.2d 395, 399 (5th Cir. 1987)).

“In exercising its discretion to seal judicial records, the court must balance the public's common law right of access against the interest favoring nondisclosure.” *Id.* Ultimately, “the decision as to access is one best left to the sound discretion of the trial court, a discretion to be exercised in light of all the relevant facts and circumstances of the particular case.” *Nixon*, 435 U.S. at 599.

In this case, the Court finds that the public's interest in access to the judicial records outweighs nondisclosure. Throughout trial the parties referred to Defendants' ANDA filings. At no time did Defendants move to seal the courtroom to protect its confidential information. In light of the number of sealed filings in this case, the Court finds that Defendants were clearly aware of any confidential information. But Defendants discussed their ANDA's in open court without hesitation. The Court does not now find it prudent to redact those records.

Accordingly, Lupin's and Hi-Tech's motions for redaction of the trial transcript (Doc. Nos. 281, 282) are **DENIED**.

It is SO ORDERED.

SIGNED this 9th day of September, 2013.

A handwritten signature in black ink, reading "Michael H. Schneider". The signature is written in a cursive, flowing style. The first name "Michael" is written in a larger, more prominent script, and "H. Schneider" follows in a similar but slightly smaller script. The signature is positioned above a horizontal line.

MICHAEL H. SCHNEIDER
UNITED STATES DISTRICT JUDGE